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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CONTEMPT PETITION NO.321 OF 1993

Juhu Consumers Stores, Mumbai Petitioner
versus
Haresh Panalal Shah and others Respondents

Mr.R.M.Hardas i/by P.N.Joshi for petitioner.
Mr.A.R.Patil, AGP for respondent no.3.

CORAM : A.S.OKA, J.

DATE : 05th April 2007

PC :

1. Heard learned counsel appearing for the petitioner. In the petition it is alleged that the contemnors have committed wilful breach of the orders dated 18th November 1991 passed in Appeal from Order No.1117 of 1991 as well as order dated 4th December 1991 passed by the learned Judge of the City Civil Court, Mumbai.

2. By order dated 18th November 1991 passed by this Court, the first respondent was directed to complete the internal work up to the second floor of the structure. However, the first respondent was restrained from constructing the third and

fourth floors till the pending Notice of Motion was disposed of.

3. The pending Notice of Motion came up before the Trial Court on 4th December 1991. A grievance was made before the Trial Court that the work was being carried out inside the premises on the third and fourth floors. Therefore, the Trial Court appointed Court Commissioner and directed the first respondent to maintain status-quo prevailing at the time of Commissioner's visit. The Commissioner accordingly visited the property and submitted a report. It appears from the record that a contempt petition was also filed by the petitioner which was disposed of by order dated 19th December 1991 by permitting the petitioner to move the Trial Court by invoking provisions of Order XXXIX, Rule 2-A of Code of Civil Procedure, 1908. Thereafter the Notice of Motion has been finally decided by order dated 10th February 1992.

4. After having heard the learned counsel for the petitioner I find that the contempt alleged is of orders dated 18th November 1991 and 4th December 1991 passed by this Court and Trial

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Court respectively. After the said orders were passed, the earlier Contempt Petition No.294 of 1991 came up before this Court. As observed earlier, the contempt petition was not entertained and the petitioners were permitted to move the Trial Court. In view of the said order dated 19th December 1991, now this contempt petition cannot be entertained. If the petitioners have already filed an application under Order XXXIX, Rule 2-A of the said Code of 1908, the same will have to be decided by the Trial Court. If application is not filed as of today, the petitioner can always do so provided the suit is pending. Subject to what is stated above no further action is called for in this contempt petition. Notice of contempt is discharged. Contempt Petition is disposed of. Civil Application No.4798 of 1996 does not survive and stands dismissed as such.

(A.S.OKA, J.)